

IN THE
**United States
Court of Appeals**

For the Ninth Circuit

P. W. SIEBRAND and HIKO SIEBRAND,
Doing Business as SIEBRAND
BROTHERS CIRCUS AND CARNIVAL,

Appellants,

vs.

GEORGE F. GOSSNELL and ESTELLA GOSS-
NELL, His Wife,

Appellees,

and

S. J. CARROLL,

Appellant,

vs.

GEORGE F. GOSSNELL and ESTELLA GOSS-
NELL, His Wife,

Appellees.

FILED

FEB - 4 1955

PAUL P. O'BRIEN,
CLERK

**Brief of Appellant Upon Appeal from
The United States District Court
for the District of Arizona**

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Filed this.....day of February, 1955

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NELL, His Wife,

Appellees.

No. 14468

**Brief of the Appellant Upon Appeal from
The United States District Court
for the District of Arizona**

*(Figures in Brackets refer to
page of the Transcript of Record)*

**Statement of Pleadings
and Facts Disclosing Jurisdiction**

On the 10th day of September, 1953, the appellees George F. Gossnell and Estella Gossnell, his wife, filed a civil action in the United States District Court for the District of Arizona, Phoenix Division, wherein they alleged the following jurisdictional facts: that the appellees are residents of the State of Iowa (T.R. 3); that

the appellants, P. W. Siebrand, Hiko Siebrand, and S. J. Carroll, are residents and citizens of the State of Arizona (T.R. 3). The appellees seek to recover damages from the appellants in the amount of \$111,215.00 (T.R. 5) for alleged injuries sustained from an accident which occurred on the bridge of Highway 60 and 70, near Tempe, Arizona, on February 20, 1953.

The pleadings, as above set forth, clearly allege jurisdictional facts sufficient to permit this suit to be filed in the District Court of Arizona, as authorized under the provisions of Title 28, Section 1332, U.S.C.A., which provides in part that the District Courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$3000.00, exclusive of interest and costs, and is between citizens of different states. This appeal is properly filed in the United States Court of Appeals for the Ninth Circuit, pursuant to the provisions of Title 28, Section 1291, U.S.C.A., wherein it is provided in part that the court of appeals shall have jurisdiction of appeals from all final decisions of the United States District Courts of the United States. This appeal is from a final decision of a district court of the United States. Title 28, Section 1294, U.S.C.A., provides that the Ninth Circuit Court of Appeals is the proper circuit of the Court of Appeals to consider this matter.

Statement of the Case

For the sake of clearness in this brief, the appellant S. J. Carroll will be known as the "the truck driver." The appellants P. W. Siebrand and Hiko Siebrand will be known as "the defendants," and the appellees, George F. Gossnell and Estella Gossnell, will be known as "the plaintiffs."

The facts are as follows: The plaintiffs, who are man and wife, were, on or about the 20th day of February, 1953, at about 10:30 in the morning, travelling Northwest on Highway 60 and 70 through the little town of Tempe, Arizona, and at this particular time they were proceeding on a bridge which crossed the Salt River near Tempe, (T.R. 75). At the same time, the truck driver was proceeding with a truck and trailer in a Southeasterly direction on the same bridge. The truck driver was driving a truck which belonged to the defendants, (T.R. 204), which was pulling a trailer belonging to William Siebrand, (T.R. 240 and 250) the nephew of the defendants. As said parties approached each other, the trailer became disconnected from the truck and crossed the highway, went head on into the plaintiff's car and caused damage to the car and bodily injury to the plaintiffs. At the conclusion of the case, the jury found for the plaintiffs and assessed damages against the defendants in the amount of \$95,000.00. The jury assessed damages against the truck driver, S. J. Carroll, in the amount of \$100.00. The truck driver, Carroll, offered to settle the judgment against him, but the plaintiffs refused to satisfy said judgment. Thereafter, the truck driver tendered into Court the sum of \$100.00, the amount of the judgment against him, and moved the Court for satisfaction of said judgment. The District Court denied the motion for satisfaction of judgment, and from that order denying the satisfaction of judgment this appeal was taken.

Specification of Error

I

The Court erred in denying the motion of the truck driver Carroll for satisfaction of judgment, after Car-

roll had paid the full amount of the judgment against him into the Court, for the reason that the Court was without authority to deny the satisfaction of such judgment after such amount was tendered into Court.

Summary of Argument

It is the contention of the truck driver that the judgment against him, in the sum of \$100.00, has been satisfied by the tender of such amount to the plaintiffs and upon their refusal to accept said amount upon tender to the Court; as a result thereof the truck driver is entitled to a complete release from any liability under the judgment, and the Court was without jurisdiction to deny truck driver's motion for satisfaction of judgment.

Argument

Proposition of Law No. 1

The payment of the money due under a judgment is a compliance of the mandate of the judgment and is considered the satisfaction of a judgment, and the court is without jurisdiction to prevent the satisfaction of a judgment when the judgment debtor complies with the judgment of the court.

Specification of Error No. I will be discussed in connection with this argument on the first proposition of law.

The general rule of law is that when a judgment debtor complies with a judgment of the court, then the judgment has been satisfied. The jurisdiction of the court continues until the satisfaction of the judgment, and then it ceases.

In the case of *Gulf, Colorado, and Santa Fe Railway Company v. E. B. Muse*, District Judge, 109 Tex. Reports 352, 207 S.W. 897, 4 A.L.R. 613, we find a state of facts wherein the judge had extended a term of court for the purpose of completing a trial and entering the orders and the judgment in the case. After the final judgment was entered, the plaintiff applied for a writ of mandamus which would have compelled the court to take further jurisdiction in the cause. The Supreme Court of Texas ruled that once a judgment has been entered that the jurisdiction of the court ceases. Quoting from this case, as reported on page 900 of the Southwest Reports, we find the following:

“It is the very essence of defendant’s right that he is entitled not have to respond further to plaintiff’s cause of action than by payment of his judgment.”

Obviously, in the case at bar, the defendant, truck driver Carroll, would not have to respond further than the payment of the judgment entered against him; and the court was without jurisdiction to prevent satisfaction of the judgment. In the case of *Wright v. Swayne*, 104 Tex. 444, 140 S.W. 22, the Supreme Court of Texas said the following:

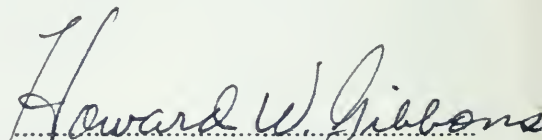
“If the court shall wilfully refuse to execute its judgments according to their true intent and affect, we would have the authority and it would be our duty to direct it to proceed to execute the judgment and sentence of the law.”

According to this statement of the law, it is within the province of the United States Court of Appeals in the present case to direct the United States District Court of Arizona to accept satisfaction of the judgment against the truck driver Carroll.

When the truck driver Carroll paid the amount of the judgment against him into court, the Court was without jurisdiction to refuse satisfaction. It would appear that the Court then realized that the satisfaction of the judgment against the truck driver Carroll would be a complete discharge and satisfaction of the judgment against the defendants Siebrand, and, therefore, in an attempt to save the judgment against the defendants Siebrand, stepped outside of its jurisdiction and attempted to prevent the satisfaction of the judgment against the truck driver Carroll. Obviously the Court had no jurisdiction to do this.

For the reasons heretofore given, we submit that the lower court exceeded its jurisdiction in denying the truck driver Carroll's motion for satisfaction of judgment, and respectfully urge that this court enter an order directing the lower court to satisfy the judgment of the defendant.

Respectfully submitted,


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